

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DENNIS ALLEN, *et al.*,

Plaintiffs

v.

C-1-01-159

JOHN CRARY, *et al.*,

Defendants

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 39), plaintiffs' Motion to Review the Report and Recommendation (doc. no. 46) and defendant John Crary's Opposition to Plaintiffs' Motion to Review the Report and Recommendation (doc. no. 47). The Magistrate Judge concluded 1) the First Amended Complaint states a claim within Rule 12 standards and defendant's Motion to Dismiss should be denied; 2) the Court has personal jurisdiction over defendant Crary under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2); and 3) venue is proper here because plan benefits were to be received in this district. The Magistrate Judge recommended that defendant Crary's Motion to Dismiss be denied.

Plaintiffs object to the Judge's narrow instruction on determining defendant Crary's fiduciary liability.

Upon a *de novo* review of the record, especially in light of plaintiffs' objections, the Court finds that plaintiffs objections have either been adequately addressed and properly

disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby **ADOPTS AND INCORPORATES HEREIN BY REFERENCE** the Report and Recommendation of the United States Magistrate Judge (doc. no. 39). Defendant Crary's Motion to Dismiss (doc. no. 28) is **DENIED**.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court

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